

**IN THE MATTER OF PORT OF OAKLAND AND GREAT
LAKES DREDGE AND DOCK COMPANY**

MPRSA Appeal No. 91-1

FINAL DECISION AND ORDER

Decided August 5, 1992

Syllabus

EPA Region IX brought an enforcement action against the Great Lakes Dredge and Dock Company ("Great Lakes"), seeking a civil penalty of \$175,000 for multiple alleged violations of the Marine Protection, Research, and Sanctuaries Act of 1972 ("MPRSA") and a permit issued to the Port of Oakland, California, under that statute. After a lengthy hearing, the presiding officer issued an Initial Decision holding that Great Lakes, as a contractor to the Port, had committed all three alleged violations involving ocean disposal of dredged, unpermitted sediments. However, he reduced the Region's proposed penalty for these violations from \$150,000 to \$10,000. The presiding officer also held that Great Lakes had violated the terms of the MPRSA permit by dumping materials at a greater distance from the center of the disposal site than the permit allowed ("off-center dumping") on at least three occasions. However, he assessed no penalty for these violations, based on his finding that Great Lakes had made good faith efforts to comply with this requirement. He denied the Region's motion to file a Second Amended Complaint that alleges additional violations for which the Region seeks \$40,000 in additional penalties.

Region IX argues in its appeal from the Initial Decision that the presiding officer's penalty determination for the dredging and disposal violations is based on numerous erroneous conclusions of fact and law. Most significantly, the Region argues that the presiding officer erred when he made a determination whether the Port's permit should have authorized ocean disposal of all of the Oakland Inner Harbor sediments, and then concluded, based on that determination, that the gravity of Great Lakes' conduct in disposing of unpermitted sediments was "slight." The Region further argues that the presiding officer erred when he failed to assess civil penalties for five alleged instances of off-center dumping. The Region also asks the Board to grant its motion for leave to file the Second Amended Complaint. The Region asks the Board to review the record de novo, and to assess to total penalty of \$215,000 for the violations alleged in the First and Second Amended Complaints.

Held: A total civil penalty of \$125,000 is assessed against Great Lakes for the three counts of disposal of unpermitted sediments (\$110,000) and three counts of off-center dumping (\$15,000). The Board affirms the presiding officer's determination that other instances of off-center dumping have not been proven, and affirms his denial of the motion for leave to file the Second Amended Complaint.